IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 905 and 908 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JIGNESHBHAI RATILAL PATEL - Petitioner(s)

Versus

STATE OF GUJRAT & 1 - Respondent(s)

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Appearance :

MR SK PATEL for Petitioner(s) : 1,
MR DIPAN DESAI, AGP for Respondent(s) : 1,
MR PINAKIN M RAVAL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 10/02/2006

COMMON ORAL JUDGMENT

1.Rule. Mr.Desai, learned AGP for Respondent No.1 and Mr.Raval, learned Counsel for Respondent No.2 waive service of notice of Rule.

2.In both the petitions, common questions arise for consideration and, therefore, they are being considered by this common judgement.

3.The petitioners in both the petitions have prayed for appropriate directions to the respondents to quash and set aside the Government Resolution dated 3.9.2004 and to prepare and implement the merit list as per Government Resolution dated 1.10.2001 for appointment to the post of Vidhya Sahayak and the petitioners have also prayed to give directions to the respondents to give appointment to the petitioners.

4.Upon hearing the learned Counsel for both the sides, it appears that the issue is covered by the decision of this Court dated 21.12.2005 in SCA No.15368 of 2004 and allied matters. It may be recorded that in the said judgement this Court, at paragraphs 12 and 13, observed as under:

> *"12. As such, the law is settled on the aspects of criteria to be taken into consideration on the date of advertisement and the change of the policy after the date of advertisement. The reference may be made to one of the decision of the Apex Court in the case of* ***P.Mahendran & Ors. Vs. State of Karnataka & Ors. reported in AIR 1990 SC 405****, whereby the view taken is that if there is change in the eligibility criteria, such change is not having any retrospective effect and the selection*

of the candidate already made is not affected.

*Reference may also be made to the another decision of the Apex Court in the case of S**tate of Uttranchal & Ors. Vs. Sidharth Srivastava & Ors. reported in 2003(9) SCC 336**, whereby, the view taken is that the rules in force at the time of initiation of the selection process are required to be applied.*

I am of the view that the same principles can be made available in the present case also.

I am of the view that the matter if considered on the basis of the aforesaid settled legal position, the Govt. Resolution dated 03.09.2004 is admittedly after the advertisement published in the newspaper, which is between 10.07.2004 to 14.07.2004, i.e. after the initiation of the recruitment process. The criteria for selection is altered. Even in the Resolution, there is no express stipulation made for preparation of merit list in connection with the recruitment process, which is already undertaken. In any case, the new policy introduced can have the prospective effect and it cannot apply retrospectively. When the Resolution and the policy of the Government is to operate with prospective effect and is not to apply retrospectively and when the petitioners referred to hereinabove, whose case is required to be considered have applied prior to Policy of the Government in response to the recruitment process already undertaken, such new policy would not operate to the prejudice of the petitioner for getting their name included as per the merit order in the selection. Therefore, it is not necessary

for this Court to consider the challenge to the resolution dated 03.09.2004 on the other aspects nor it is required for this Court to consider the legality and validity of the resolution dated 03.09.2004 on the basis that it is applied prospectively.

13. The only aspect, which deserves to be recorded is that the Resolution dated 03.09.2004 is to apply prospectively qua the recruitment process initiated thereafter and not prior thereto."

5. On the basis of the same reasoning the impugned Resolution will have the prospective effect and it would not apply to the selection process already undertaken from 10.7.2004 onwards for appointment to the post of Vidhya Sahayak pursuant to the advertisement, copy whereof is produced at Annexure "C".

6. In any case, the appointment already given by now by the concerned Respondent District Panchayat to any candidate on the post of Vidhya Sahayak is not to be disturbed.

7. Therefore, it is directed that the respondent District Panchayat shall consider the merit of both the petitioners on the basis of the position prevailing prior to 3.9.2004 and if the petitioners are entitled to be included in the select list on the basis of,

inter se, merit and if without disturbing the appointments already made, the vacancies are available which were the subject matter of the advertisement Annexure “C”, the petitioners shall be considered for appointment for the post of Vidhya Sahayak. The aforesaid exercise shall be undertaken and complete within a period of one month from the date of receipt of the order of this Court.

8. Rule partly made absolute to the aforesaid extent. Considering the facts and circumstances, there shall be no order as to costs.

10.2.2006 **(Jayant Patel, J.)**

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